VFH

263 NLRB No. 66

D--9128
Newark, NJ

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FEDERATION OF EMPLOYEES UNION,
LOCAL 1027

and

Case 22--CB--4147

INDEX CONSTRUCTION CORPORATION

DECISION AND ORDER

Upon a charge filed on June 14, 1979, by Index Construction Corporation, herein Index, and subsequently amended on June 25, 1979, and duly served on Federation of Employees Union, Local 1027, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint on September 16, 1980, against Respondent alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent thereafter failed to file an answer to the complaint.

On February 5, 1982, counsel for the General Counsel filed directly with the Board a motion to transfer the proceedings to

the Board and a Motion for Summary Judgment. On February 12, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause and the allegations in the Motion for Summary Judgment accordingly stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof ''all of the allegations contained in the Complaint shall be deemed to be

admitted to be true and may be so found by the Board.'' Further, according to the uncontroverted allegations of the Motion for Summary Judgment, Respondent was duly served with the complaint and notice of hearing but failed to file an answer. Respondent has also failed to file a response to the Notice To Show Cause. Accordingly, under the rule set forth above, no good cause having been shown for the failure to file an answer to the complaint, the allegations of the complaint are deemed admitted and are found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of the Employer

At all times material herein, Index has been a New York corporation and has maintained an office and place of business at 67 South Munn Avenue, East Orange, New Jersey, herein called the Corinthian Towers project, where it has been engaged in the business of demolition and construction of multiple dwellings. Index's East Orange project is the only facility involved in this proceeding.

In the course and conduct of Index's business operations during the 12 months preceding issuance of the complaint, said operations being representative of its operations at all material times herein, Index purchased and caused to be transported to its

East Orange project construction materials valued in excess of $50,000 directly from suppliers located outside the State of New Jersey.

We find, on the basis of the foregoing, that Index is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

On or about October 25, 1978, Index recognized Respondent as the exclusive bargaining representative of all construction and maintenance employees employed by Index at its Corinthian Towers Project in East Orange, New Jersey, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act. Further, on or about October 25, 1978, Index and Respondent executed a collective-bargaining agreement with a term from December 14, 1978, to December 13, 1981. That contract contained provisions for the deduction of dues and/or assessments within the first 7 days of an employee's employment regardless of the employee's membership in Respondent or lack of membership therein. And, it also contained provisions which provided for the employment of Respondent's members only.

Also, on or about October 25, 1978, Index and Respondent entered into, and since that date have maintained, a practice

East Orange project construction materials valued in excess of $50,000 directly from suppliers located outside the State of New Jersey.

We find, on the basis of the foregoing, that Index is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

On or about October 25, 1978, Index recognized Respondent as the exclusive bargaining representative of all construction and maintenance employees employed by Index at its Corinthian Towers Project in East Orange, New Jersey, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act. Further, on or about October 25, 1978, Index and Respondent executed a collective-bargaining agreement with a term from December 14, 1978, to December 13, 1981. That contract contained provisions for the deduction of dues and/or assessments within the first 7 days of an employee's employment regardless of the employee's membership in Respondent or lack of membership therein. And, it also contained provisions which provided for the employment of Respondent's members only.

Also, on or about October 25, 1978, Index and Respondent entered into, and since that date have maintained, a practice

requiring that Respondent be the sole and exclusive source of employee referrals to employment with Index. Since on or about October 25, 1978, Respondent has conditioned and continues to condition referral of applicants to employment with Index on the basis of membership in Respondent and on the execution of dues-checkoff authorizations.

Based on the foregoing, we find that by including in its collective-bargaining agreement provisions for the deduction of dues and/or assessments within the first 7 days of an employee's employment regardless of the employee's membership in Respondent or lack thereof; and by also including provisions for the employment of Respondent's members only, Respondent has restrained and coerced, and is restraining and coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act and that, by such conduct, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

Further, we find that by conditioning referral of applicants to employment with Index on the basis of membership in Respondent and on the execution of dues-checkoff authorizations, Respondent has restrained and coerced, and is restraining and coercing, employees in the exercise of the rights guaranteed them under Section 7 of the Act and that, by such conduct, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(B)(1)(A) of the Act.

And, by conditioning referral of applicants to employment with Index on the basis of membership in Respondent's labor

organization and on the execution of dues-checkoff authorizations, Respondent has also caused, and has attempted to cause, Index to discriminate against its employees in violation of Section 8(a)(3) of the Act, and Respondent has thereby engaged in unfair labor practices within the meaning of Section 8(b)(2) of the Act. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Index described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall order Respondent to cease and desist from maintaining or seeking to enforce provisions in its contract with Index which provide for the deduction of union dues and/or assessments from the wages of employees during the employees' first 7 days of employment regardless of the employees' membership in Respondent or lack thereof, and which require the employment of Respondent's members only. We shall also order

Respondent to cease and desist from conditioning referral of applicants for employment with Index on the basis of membership in Respondent and on the execution of dues-checkoff authorizations.

Further, we shall order Respondent to reimburse the affected employees for all dues and fees paid pursuant to the unlawful practices. Such reimbursement shall be computed with interest as prescribed in Florida Steel Corporation, 231 NLRB 651 (1977).[1]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Index Construction Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Federation of Employees Union, Local 1027, is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining provisions in its contract with Index which provide for the deduction of dues and/or assessments from the wages of employees during the employees' first 7 days of employment regardless of the employees' membership in Respondent or lack thereof and which require the employment of Respondent's members only, Respondent has engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) of the Act.

---

[1] See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

4. By conditioning referral of applicants to employment with Index on the basis of membership in Respondent and the execution of dues-checkoff authorizations, Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Federation of Employees Union, Local 1027, Newark, New Jersey, its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Maintaining or seeking to enforce provisions in its collective-bargaining agreement with Index Construction Corporation which provided for the deduction of dues and/or assessments from the wages of employees during the employees' first 7 days of employment regardless of the employees' membership in Respondent or lack thereof; and which require the employment of Respondent's members only.

(b) Conditioning the referral of applicants to employment with Index Construction Corporation on the basis of membership in Respondent and the execution of dues-checkoff authorizations.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Reimburse the affected employees for all dues and fees paid pursuant to the unfair labor practices in this case in accordance with the formula set forth in the section of this Decision entitled ''The Remedy.''

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all union dues-checkoff authorizations and all other records necessary to analyze and compute the amount of reimbursement due under the terms of this Order.

(c) Post at its Newark, New Jersey, facility copies of the attached notice marked ''Appendix.''[2] Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to union members are

---

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Forward signed copies of said notice to the Regional Director for Region 22 for posting by Index Construction Corporation, it being willing, at its Corinthian Towers project in East Orange, New Jersey, in places where notices to employees are customarily posted.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. August 18, 1982

John R. Van de Water, Chairman

John H. Fanning, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT maintain or seek to enforce provisions in our contract with Index Construction Corporation which provide for the deduction of union dues and/or assessments from the wages of employees' during the first 7 days of their employment regardless of the employees' membership in our Union or lack thereof, and which require the employment of our members only.

WE WILL NOT condition the referral of applicants to employment with Index Construction Corporation on the basis of membership in our Union and the execution of dues-checkoff authorizations in our favor.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL reimburse the affected employees for all dues and fees paid as a result of our unfair labor practices, with interest.

FEDERATION OF EMPLOYEES UNION, LOCAL 1027

(Labor Organization)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Peter D. Rodino Jr. Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102, Telephone 201--645--3652.